[COMMITTEE PRINT]

FEBRUARY 16, 2005

[Showing H.R. 29, as reported by the Subcommittee on Commerce, Trade, and Consumer Protection]

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2   This Act may be cited as the "Securely Protect Your-

3 self Against Cyber Trespass Act" or the "SPY ACT".

4 **SEC. 2. PROHIBITION OF DECEPTIVE ACTS OR PRACTICES**

5   **RELATING TO SPYWARE.**

6   (a) PROHIBITION.—It is unlawful for any person,

7 who is not the owner or authorized user of a protected

8 computer, to engage in deceptive acts or practices that in-

9 volve any of the following conduct with respect to the pro-

10 tected computer:

11   (1) Taking control of the computer by—

12   (A) utilizing such computer to send unso-

13   licited information or material from the com-

14   puter to others;

15   (B) diverting the Internet browser of the

16   computer, or similar program of the computer

17   used to access and navigate the Internet—

2

1   (i) without authorization of the owner

2   or authorized user of the computer; and

3   (ii) away from the site the user in-

4   tended to view, to one or more other Web

5   pages, such that the user is prevented from

6   viewing the content at the intended Web

7   page, unless such diverting is otherwise au-

8   thorized;

9   (C) accessing, hijacking, or otherwise using

10   the modem, or Internet connection or service,

11   for the computer and thereby causing damage

12   to the computer or causing the owner or au-

13   thorized user or a third party defrauded by

14   such conduct to incur charges or other costs for

15   a service that is not authorized by such owner

16   or authorized user;

17   (D) using the computer as part of an ac-

18   tivity performed by a group of computers that

19   causes damage to another computer; or

20   (E) delivering advertisements that a user

21   of the computer cannot close without turning

22   off the computer or closing all sessions of the

23   Internet browser for the computer.

1   (2) Modifying settings related to use of the
2 computer or to the computer's access to or use of
3 the Internet by altering—

4   (A) the Web page that appears when the
5   owner or authorized user launches an Internet
6   browser or similar program used to access and
7   navigate the Internet;

8   (B) the default provider used to access or
9   search the Internet, or other existing Internet
10   connections settings;

11   (C) a list of bookmarks used by the com-
12   puter to access Web pages; or

13   (D) security or other settings of the com-
14   puter that protect information about the owner
15   or authorized user for the purposes of causing
16   damage or harm to the computer or owner or
17   user.

18   (3) Collecting personally identifiable informa-
19 tion through the use of a keystroke logging function.

20   (4) Inducing the owner or authorized user to
21 install a component of computer software onto the
22 computer, or preventing reasonable efforts to block
23 the installation or execution of, or to disable, a com-
24 ponent of computer software by—

4

   (A) presenting the owner or authorized
user with an option to decline installation of
such a component such that, when the option is
selected by the owner or authorized user or
when the owner or authorized user reasonably
attempts to decline the installation, the installation nevertheless proceeds; or

   (B) causing such a component that the
owner or authorized user has properly removed
or disabled to automatically reinstall or reactivate on the computer.

  (5) Misrepresenting that installing a separate
component of computer software or providing log-in
and password information is necessary for security
or privacy reasons, or that installing a separate component of computer software is necessary to open,
view, or play a particular type of content.

  (6) Inducing the owner or authorized user to
install or execute computer software by misrepresenting the identity or authority of the person or entity providing the computer software to the owner or
user.

  (7) Inducing the owner or authorized user to
provide personally identifiable, password, or account
information to another person—

1   (A) by misrepresenting the identity of the

2   person seeking the information; or

3   (B) without the authority of the intended

4   recipient of the information.

5   (8) Removing, disabling, or rendering inoper-

6   ative a security, anti-spyware, or anti-virus tech-

7   nology installed on the computer.

8   (9) Installing or executing on the computer one

9   or more additional components of computer software

10   with the intent of causing a person to use such com-

11   ponents in a way that violates any other provision of

12   this section.

13   (b) GUIDANCE.—The Commission shall issue guid-

14 ance regarding compliance with and violations of this sec-

15 tion. This subsection shall take effect upon the date of

16 the enactment of this Act.

17   (c) EFFECTIVE DATE.—Except as provided in sub-

18 section (b), this section shall take effect upon the expira-

19 tion of the 6-month period that begins on the date of the

20 enactment of this Act.

21 **SEC. 3. PROHIBITION OF COLLECTION OF CERTAIN INFOR-**

22   **MATION WITHOUT NOTICE AND CONSENT.**

23   (a) OPT-IN REQUIREMENT.—Except as provided in

24 subsection (e), it is unlawful for any person—

6

1　　　　(1) to transmit to a protected computer, which

2　　　is not owned by such person and for which such per-

3　　　son is not an authorized user, any information col-

4　　　lection program, unless—

5　　　　　　(A) such information collection program

6　　　　　　provides notice in accordance with subsection

7　　　　　　(c) before execution of any of the information

8　　　　　　collection functions of the program; and

9　　　　　　(B) such information collection program

10　　　　　includes the functions required under sub-

11　　　　　section (d); or

12　　　　(2) to execute any information collection pro-

13　　　gram installed on such a protected computer

14　　　unless—

15　　　　　　(A) before execution of any of the informa-

16　　　　　tion collection functions of the program, the

17　　　　　owner or an authorized user of the protected

18　　　　　computer has consented to such execution pur-

19　　　　　suant to notice in accordance with subsection

20　　　　　(c); and

21　　　　　　(B) such information collection program

22　　　　　includes the functions required under sub-

23　　　　　section (d).

1   (b) INFORMATION COLLECTION PROGRAM.—For pur-

2 poses of this section, the term ''information collection pro-

3 gram'' means computer software that—

4   (1) (A) collects personally identifiable informa-

5   tion; and

6   (B) (i) sends such information to a person

7   other than the owner or authorized user of the com-

8   puter, or

9   (ii) uses such information to deliver advertising

10   to, or display advertising on, the computer; or

11   (2) (A) collects information regarding the Web

12   pages accessed using the computer; and

13   (B) uses such information to deliver advertising

14   to, or display advertising on, the computer.

15   (c) NOTICE AND CONSENT.—

16   (1) IN GENERAL.—Notice in accordance with

17   this subsection with respect to an information collec-

18   tion program is clear and conspicuous notice in plain

19   language, set forth as the Commission shall provide,

20   that meets all of the following requirements:

21   (A) The notice clearly distinguishes such

22   notice from any other information visually pre-

23   sented contemporaneously on the computer.
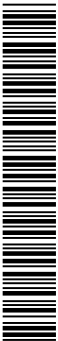
1   (B) The notice contains one of the fol-
2   lowing statements, as applicable, or a substan-
3   tially similar statement:

4   (i) With respect to an information col-
5   lection program described in subsection
6   (b)(1): "This program will collect and
7   transmit information about you. Do you
8   accept?".

9   (ii) With respect to an information
10   collection program described in subsection
11   (b)(2): "This program will collect informa-
12   tion about Web pages you access and will
13   use that information to display advertising
14   on your computer. Do you accept?".

15   (iii) With respect to an information
16   collection program that performs the ac-
17   tions described in both paragraphs (1) and
18   (2) of subsection (b): "This program will
19   collect and transmit information about you
20   and will collect information about Web
21   pages you access and use that information
22   to display advertising on your computer.
23   Do you accept?".

24   (C) The notice provides for the user—

1   (i) to grant or deny consent referred

2   to in subsection (a) by selecting an option

3   to grant or deny such consent; and

4   (ii) to abandon or cancel the trans-

5   mission or execution referred to in sub-

6   section (a) without granting or denying

7   such consent.

8   (D) The notice provides an option for the

9 user to select to display on the computer, before

10 granting or denying consent using the option

11 required under subparagraph (C), a clear de-

12 scription of—

13   (i) the types of information to be col-

14   lected and sent (if any) by the information

15   collection program;

16   (ii) the purpose for which such infor-

17   mation is to be collected and sent; and

18   (iii) in the case of an information col-

19   lection program that first executes any of

20   the information collection functions of the

21   program together with the first execution

22   of other computer software, the identity of

23   any such software that is an information

24   collection program.
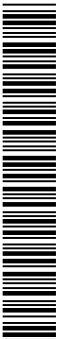
1   (E) The notice provides for concurrent dis-

2   play of the information required under subpara-

3   graphs (B) and (C) and the option required

4   under subparagraph (D) until the user—

5   (i) grants or denies consent using the

6   option required under subparagraph (C)(i);

7   (ii) abandons or cancels the trans-

8   mission or execution pursuant to subpara-

9   graph (C)(ii); or

10   (iii) selects the option required under

11   subparagraph (D).

12   (2) SINGLE NOTICE.—The Commission shall

13 provide that, in the case in which multiple informa-

14 tion collection programs are provided to the pro-

15 tected computer together, or as part of a suite of

16 functionally related software, the notice require-

17 ments of paragraphs (1)(A) and (2)(A) of subsection

18 (a) may be met by providing, before execution of any

19 of the information collection functions of the pro-

20 grams, clear and conspicuous notice in plain lan-

21 guage in accordance with paragraph (1) of this sub-

22 section by means of a single notice that applies to

23 all such information collection programs, except that

24 such notice shall provide the option under subpara-

1   graph (D) of paragraph (1) of this subsection with

2   respect to each such information collection program.

3   (3) CHANGE IN INFORMATION COLLECTION.—If

4   an owner or authorized user has granted consent to

5   execution of an information collection program pur-

6   suant to a notice in accordance with this subsection:

7   (A) IN GENERAL.—No subsequent such

8   notice is required, except as provided in sub-

9   paragraph (B).

10   (B) SUBSEQUENT NOTICE.—The person

11   who transmitted the program shall provide an-

12   other notice in accordance with this subsection

13   and obtain consent before such program may be

14   used to collect or send information of a type or

15   for a purpose that is materially different from,

16   and outside the scope of, the type or purpose

17   set forth in the initial or any previous notice.

18   (4) REGULATIONS.—The Commission shall

19   issue regulations to carry out this subsection.

20   (d) REQUIRED FUNCTIONS.—The functions required

21   under this subsection to be included in an information col-

22   lection program that executes any information collection

23   functions with respect to a protected computer are as fol-

24   lows:

12

1   (1) DISABLING FUNCTION.—With respect to

2   any information collection program, a function of

3   the program that allows a user of the program to re-

4   move the program or disable operation of the pro-

5   gram with respect to such protected computer by a

6   function that—

7   (A) is easily identifiable to a user of the

8   computer; and

9   (B) can be performed without undue effort

10   or knowledge by the user of the protected com-

11   puter.

12   (2) IDENTITY FUNCTION.—

13   (A) IN GENERAL.—With respect only to an

14   information collection program that uses infor-

15   mation collected in the manner described in

16   paragraph (1)(B)(ii) or (2)(B) of subsection (b)

17   and subject to subparagraph (B) of this para-

18   graph, a function of the program that provides

19   that each display of an advertisement directed

20   or displayed using such information, when the

21   owner or authorized user is accessing a Web

22   page or online location other than of the pro-

23   vider of the computer software, is accompanied

24   by the name of the information collection pro-

25   gram, a logogram or trademark used for the ex-

1 clusive purpose of identifying the program, or a

2 statement or other information sufficient to

3 clearly identify the program.

4   (B) EXEMPTION FOR EMBEDDED ADVER-

5 TISEMENTS.—The Commission may, by regula-

6 tion, exempt from the applicability of subpara-

7 graph (A) the embedded display of any adver-

8 tisement on a Web page that contempora-

9 neously displays other information.

10   (3) RULEMAKING.—The Commission may issue

11 regulations to carry out this subsection.

12 (e) LIMITATION ON LIABILITY.—A telecommuni-

13 cations carrier, a provider of information service or inter-

14 active computer service, a cable operator, or a provider

15 of transmission capability shall not be liable under this

16 section to the extent that the carrier, operator, or

17 provider—

18   (1) transmits, routes, hosts, stores, or provides

19 connections for an information collection program

20 through a system or network controlled or operated

21 by or for the carrier, operator, or provider; or

22   (2) provides an information location tool, such

23 as a directory, index, reference, pointer, or hypertext

24 link, through which the owner or user of a protected

25 computer locates an information collection program.

14

1 **SEC. 4. ENFORCEMENT.**

2 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—

3 This Act shall be enforced by the Commission under the

4 Federal Trade Commission Act (15 U.S.C. 41 et seq.).

5 A violation of any provision of this Act or of a regulation

6 issued under this Act shall be treated as an unfair or de-

7 ceptive act or practice violating a rule promulgated under

8 section 18 of the Federal Trade Commission Act (15

9 U.S.C. 57a).

10 (b) PENALTY FOR PATTERN OR PRACTICE VIOLA-

11 TIONS.—

12   (1) IN GENERAL.—Notwithstanding subsection

13   (a) and the Federal Trade Commission Act, in the

14   case of a person who engages in a pattern or prac-

15   tice that violates section 2 or 3, the Commission

16   may, in its discretion, seek a civil penalty for such

17   pattern or practice of violations in an amount, as de-

18   termined by the Commission, of not more than—

19   (A) $3,000,000 for each violation of sec-

20   tion 2; and

21   (B) $1,000,000 for each violation of sec-

22   tion 3.

23   (2) TREATMENT OF SINGLE ACTION OR CON-

24   DUCT.—In applying paragraph (1)—

25   (A) any single action or conduct that vio-

26   lates section 2 or 3 with respect to multiple

1   protected computers shall be treated as a single

2   violation; and

3   (B) any single action or conduct that vio-

4   lates more than one paragraph of section 2(a)

5   shall be considered multiple violations, based on

6   the number of such paragraphs violated.

7   (c) REQUIRED SCIENTER.—Relief sought under this

8 section for any action may not be granted by the Commis-

9 sion or any court unless the Commission or court, respec-

10 tively, establishes that the action was committed with ac-

11 tual knowledge or knowledge fairly implied on the basis

12 of objective circumstances that such act is unfair or decep-

13 tive or violates this Act.

14   (d) FACTORS IN AMOUNT OF PENALTY.—In deter-

15 mining the amount of any penalty pursuant to subsection

16 (a) or (b), the court shall take into account the degree

17 of culpability, any history of prior such conduct, ability

18 to pay, effect on ability to continue to do business, and

19 such other matters as justice may require.

20   (e) EXCLUSIVENESS OF REMEDIES.—The remedies

21 in this section (including remedies available to the Com-

22 mission under the Federal Trade Commission Act) are the

23 exclusive remedies for violations of this Act.

24   (f) EFFECTIVE DATE.—To the extent only that this

25 section applies to violations of section 2(a), this section

1 shall take effect upon the expiration of the 6-month period

2 that begins on the date of the enactment of this Act.

3 **SEC. 5. LIMITATIONS.**

4 (a) LAW ENFORCEMENT AUTHORITY.—Sections 2

5 and 3 shall not apply to—

6   (1) any act taken by a law enforcement agent

7   in the performance of official duties; or

8   (2) the transmission or execution of an infor-

9   mation collection program in compliance with a law

10   enforcement, investigatory, national security, or reg-

11   ulatory agency or department of the United States

12   or any State in response to a request or demand

13   made under authority granted to that agency or de-

14   partment, including a warrant issued under the Fed-

15   eral Rules of Criminal Procedure, an equivalent

16   State warrant, a court order, or other lawful proc-

17   ess.

18 (b) EXCEPTION RELATING TO SECURITY.—Nothing

19 in this Act shall apply to—

20   (1) any monitoring of, or interaction with, a

21   subscriber's Internet or other network connection or

22   service, or a protected computer, by a telecommuni-

23   cations carrier, cable operator, computer hardware

24   or software provider, or provider of information serv-

25   ice or interactive computer service, to the extent that

17

1   such monitoring or interaction is for network or

2   computer security purposes, diagnostics, technical

3   support, or repair, or for the detection or prevention

4   of fraudulent activities; or

5   (2) a discrete interaction with a protected com-

6   puter by a provider of computer software solely to

7   determine whether the user of the computer is au-

8   thorized to use such software, that occurs upon—

9   (A) initialization of the software; or

10   (B) an affirmative request by the owner or

11   authorized user for an update of, addition to, or

12   technical service for, the software.

13   (c) GOOD SAMARITAN PROTECTION.—No provider of

14 computer software or of interactive computer service may

15 be held liable under this Act on account of any action vol-

16 untarily taken, or service provided, in good faith to remove

17 or disable a program used to violate section 2 or 3 that

18 is installed on a computer of a customer of such provider,

19 if such provider notifies the customer and obtains the con-

20 sent of the customer before undertaking such action or

21 providing such service.

22   (d) LIMITATION ON LIABILITY.—A manufacturer or

23 retailer of computer equipment shall not be liable under

24 this Act to the extent that the manufacturer or retailer

25 is providing third party branded computer software that
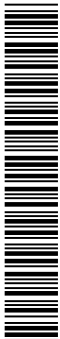
1 is installed on the equipment the manufacturer or retailer

2 is manufacturing or selling.

3 **SEC. 6. EFFECT ON OTHER LAWS.**

4 (a) PREEMPTION OF STATE LAW.—

5 (1) PREEMPTION OF SPYWARE LAWS.—This

6 Act supersedes any provision of a statute, regula-

7 tion, or rule of a State or political subdivision of a

8 State that expressly regulates—

9 (A) deceptive conduct with respect to com-

10 puters similar to that described in section 2(a);

11 (B) the transmission or execution of a

12 computer program similar to that described in

13 section 3; or

14 (C) the use of computer software that dis-

15 plays advertising content based on the Web

16 pages accessed using a computer.

17 (2) ADDITIONAL PREEMPTION.—

18 (A) IN GENERAL.—No person other than

19 the Attorney General of a State may bring a

20 civil action under the law of any State if such

21 action is premised in whole or in part upon the

22 defendant violating any provision of this Act.

23 (B) PROTECTION OF CONSUMER PROTEC-

24 TION LAWS.—This paragraph shall not be con-

25 strued to limit the enforcement of any State

1 consumer protection law by an Attorney Gen-

2 eral of a State.

3   (3) PROTECTION OF CERTAIN STATE LAWS.—

4 This Act shall not be construed to preempt the ap-

5 plicability of—

6   (A) State trespass, contract, or tort law; or

7   (B) other State laws to the extent that

8   those laws relate to acts of fraud.

9   (b) PRESERVATION OF FTC AUTHORITY.—Nothing

10 in this Act may be construed in any way to limit or affect

11 the Commission's authority under any other provision of

12 law, including the authority to issue advisory opinions

13 (under part 1 of volume 16 of the Code of Federal Regula-

14 tions), policy statements, or guidance regarding this Act.

SEC. 7. ANNUAL FTC REPORT.

15

16   For the 12-month period that begins upon the effec-

17 tive date under section 11(a) and for each 12-month pe-

18 riod thereafter, the Commission shall submit a report to

19 the Congress that—

20   (1) specifies the number and types of actions

21   taken during such period to enforce sections 2(a)

22   and section 3, the disposition of each such action,

23   any penalties levied in connection with such actions,

24   and any penalties collected in connection with such

25   actions; and

20

1   (2) describes the administrative structure and

2   personnel and other resources committed by the

3   Commission for enforcement of this Act during such

4   period.

5 Each report under this subsection for a 12-month period

6 shall be submitted not later than 90 days after the expira-

7 tion of such period.

8 SEC. 8. FTC REPORT ON COOKIES.

9   (a) IN GENERAL.—Not later than the expiration of

10 the 6-month period that begins on the date of the enact-

11 ment of this Act, the Commission shall submit a report

12 to the Congress regarding the use of cookies, including

13 tracking cookies, in the delivery or display of advertising

14 to the owners and users of computers. The report shall

15 examine and describe the methods by which cookies and

16 the Web sites that place them on computers function sepa-

17 rately and together, and shall compare the use of cookies

18 with the use of information collection programs (as such

19 term is defined in section 3) to determine the extent to

20 which such uses are similar or different. The report may

21 include such recommendations as the Commission con-

22 siders necessary and appropriate, including treatment of

23 cookies under this Act or other laws.

24   (b) DEFINITION.—For purposes of this section, the

25 term ''tracking cookie'' means a cookie or similar text or

1 data file used alone or in conjunction with one or more

2 Web sites to transmit or convey personally identifiable in-

3 formation of a computer owner or user, or information re-

4 garding Web pages accessed by the owner or user, to a

5 party other than the intended recipient, for the purpose

6 of—

7   (1) delivering or displaying advertising to the

8   owner or user; or

9   (2) assisting the intended recipient to deliver or

10   display advertising to the owner, user, or others.

11   (c) EFFECTIVE DATE.—This section shall take effect

12 on the date of the enactment of this Act.

13 **SEC. 9. REGULATIONS.**

14   (a) IN GENERAL.—The Commission shall issue the

15 regulations required by this Act not later than the expira-

16 tion of the 6-month period beginning on the date of the

17 enactment of this Act. Any regulations issued pursuant

18 to this Act shall be issued in accordance with section 553

19 of title 5, United States Code.

20   (b) EFFECTIVE DATE.—This section shall take effect

21 on the date of the enactment of this Act.

22 **SEC. 10. DEFINITIONS.**

23   For purposes of this Act:

24   (1) CABLE OPERATOR.—The term "cable oper-

25   ator" has the meaning given such term in section

22

1   602 of the Communications Act of 1934 (47 U.S.C.

2   522).

3   (2) COLLECT.—The term "collect", when used

4   with respect to information and for purposes only of

5   section 3(b)(1), does not include obtaining of the in-

6   formation by a party who is intended by the owner

7   or authorized user of a protected computer to receive

8   the information pursuant to the owner or authorized

9   user—

10   (A) transferring the information to such

11   intended recipient using the protected com-

12   puter; or

13   (B) storing the information on the pro-

14   tected computer in a manner so that it is acces-

15   sible by such intended recipient.

16   (3) COMPUTER; PROTECTED COMPUTER.—The

17   terms "computer" and "protected computer" have

18   the meanings given such terms in section 1030(e) of

19   title 18, United States Code.

20   (4) COMPUTER SOFTWARE.—

21   (A) IN GENERAL.—Except as provided in

22   subparagraph (B), the term "computer soft-

23   ware" means a set of statements or instructions

24   that can be installed and executed on a com-

1   puter for the purpose of bringing about a cer-

2   tain result.

3   (B) EXCEPTION.—Such term does not in-

4   clude computer software that is placed on the

5   computer system of a user by an Internet serv-

6   ice provider, interactive computer service, or

7   Internet Web site solely to enable the user sub-

8   sequently to use such provider or service or to

9   access such Web site.

10   (C) RULE OF CONSTRUCTION REGARDING

11   COOKIES.—This paragraph may not be con-

12   strued to include, as computer software, a cook-

13   ie or any other type of text or data file that

14   solely may be read or transferred by a com-

15   puter.

16   (5) COMMISSION.—The term ''Commission''

17   means the Federal Trade Commission.

18   (6) DAMAGE.—The term ''damage'' has the

19   meaning given such term in section 1030(e) of title

20   18, United States Code.

21   (7) DECEPTIVE ACTS OR PRACTICES.—The

22   term ''deceptive acts or practices'' has the meaning

23   applicable to such term for purposes of section 5 of

24   the Federal Trade Commission Act (15 U.S.C. 45).

24
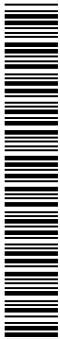
1   (8) DISABLE.—The term "disable" means, with

2 respect to an information collection program, to per-

3 manently prevent such program from executing any

4 of the functions described in section 3(b) that such

5 program is otherwise capable of executing (including

6 by removing, deleting, or disabling the program), un-

7 less the owner or operator of a protected computer

8 takes a subsequent affirmative action to enable the

9 execution of such functions.

10   (9) INFORMATION COLLECTION FUNCTIONS.—

11 The term "information collection functions" means,

12 with respect to an information collection program,

13 the functions of the program described in subsection

14 (b) of section 3.

15   (10) INFORMATION SERVICE.—The term "infor-

16 mation service" has the meaning given such term in

17 section 3 of the Communications Act of 1934 (47

18 U.S.C. 153).

19   (11) INTERACTIVE COMPUTER SERVICE.—The

20 term "interactive computer service" has the meaning

21 given such term in section 230(f) of the Communica-

22 tions Act of 1934 (47 U.S.C. 230(f)).

23   (12) INTERNET.—The term "Internet" means

24 collectively the myriad of computer and tele-

25 communications facilities, including equipment and

1   operating software, which comprise the inter-

2   connected world-wide network of networks that em-

3   ploy the Transmission Control Protocol/Internet

4   Protocol, or any predecessor or successor protocols

5   to such protocol, to communicate information of all

6   kinds by wire or radio.

7   (13) PERSONALLY IDENTIFIABLE INFORMA-

8   TION.—

9   (A) IN GENERAL.—The term "personally

10   identifiable information" means the following

11   information, to the extent only that such infor-

12   mation allows a living individual to be identified

13   from that information:

14   (i) First and last name of an indi-

15   vidual.

16   (ii) A home or other physical address

17   of an individual, including street name,

18   name of a city or town, and zip code.

19   (iii) An electronic mail address.

20   (iv) A telephone number.

21   (v) A social security number, tax iden-

22   tification number, passport number, driv-

23   er's license number, or any other govern-

24   ment-issued identification number.

25   (vi) A credit card number.

1   (vii) Any access code, password, or ac-
2   count number, other than an access code
3   or password transmitted by an owner or
4   authorized user of a protected computer to
5   the intended recipient to register for, or
6   log onto, a Web page or other Internet
7   service or a network connection or service
8   of a subscriber that is protected by an ac-
9   cess code or password.

10   (viii) Date of birth, birth certificate
11   number, or place of birth of an individual,
12   except in the case of a date of birth trans-
13   mitted or collected for the purpose of com-
14   pliance with the law.

15   (B) RULEMAKING.—The Commission may,
16 by regulation, add to the types of information
17 specified under subparagraph (A) that shall be
18 considered personally identifiable information
19 for purposes of this Act, except that such infor-
20 mation may not include any record of aggregate
21 data that does not identify particular persons,
22 particular computers, particular users of com-
23 puters, or particular email addresses or other
24 locations of computers with respect to the
25 Internet.

1   (14) SUITE OF FUNCTIONALLY RELATED SOFT-
2   WARE.—The term suite of ''functionally related soft-
3   ware'' means a group of computer software pro-
4   grams distributed to an end user by a single pro-
5   vider, which programs are necessary to enable fea-
6   tures or functionalities of an integrated service of-
7   fered by the provider.

8   (15) TELECOMMUNICATIONS CARRIER.—The
9   term ''telecommunications carrier'' has the meaning
10   given such term in section 3 of the Communications
11   Act of 1934 (47 U.S.C. 153).

12   (16) TRANSMIT.—The term ''transmit'' means,
13   with respect to an information collection program,
14   transmission by any means.

15   (17) WEB PAGE.—The term ''Web page'' means
16   a location, with respect to the World Wide Web, that
17   has a single Uniform Resource Locator or another
18   single location with respect to the Internet, as the
19   Federal Trade Commission may prescribe.

20 **SEC. 11. APPLICABILITY AND SUNSET.**

21   (a) EFFECTIVE DATE.—Except as specifically pro-
22 vided otherwise in this Act, this Act shall take effect upon
23 the expiration of the 12-month period that begins on the
24 date of the enactment of this Act.

1   (b) APPLICABILITY.—Section 3 shall not apply to an
2 information collection program installed on a protected
3 computer before the effective date under subsection (a) of
4 this section.

5   (c) SUNSET.—This Act shall not apply after Decem-
6 ber 31, 2010.